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March 1, 2021

The Honorable Michael D. Hurley
Clerk of the Senate
State House
Room 335
Boston, MA 02133

The Honorable Steven T. James
Clerk of the House
State House
Room 145
Boston, MA 02133

The Honorable Adam G. Hinds, Senate Chair
Joint Committee on Revenue
State House
Room 309
Boston, MA 02133

The Honorable Mark J. Cusack, House Chair
Joint Committee on Revenue
State House
Room 34
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The Honorable Aaron Michlewitz, Chair
House Committee on Ways and Means
State House
Room 243
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The Honorable Michael J. Rodrigues, Chair
Senate Committee on Ways and Means
State House
Room 109-D
Boston, MA 02133

The Honorable Harold P. Naughton, Jr., House Chair
Joint Committee on Public Safety and Homeland Security
State House
Room 167
Boston, MA 02133

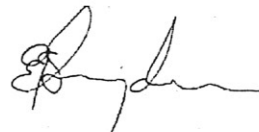
The Honorable Michael O. Moore, Senate Chair
Joint Committee on Public Safety and Homeland Security
State House
Room 109-B
Boston, MA 02133

Honorable Chairmen:

Pursuant to Chapter 64C, §40(d) of the General Laws, the Multi-Agency Illegal Tobacco Task Force is pleased to file its *Annual Report of Multi-Agency Illegal Tobacco Task Force*.

If you have any questions concerning this report, please contact Marikae Grace Toye, Associate General Counsel at the Department of Revenue and my designee to serve as Co-Chair of the Multi-Agency Illegal Tobacco Task Force (at 617-626-3292).

Sincerely,



Geoffrey E. Snyder
Commissioner

Attachment: Report

cc: Michael J. Heffernan, Secretary of Administration and Finance (Rm. 373)
Representative Ronald Mariano, House Speaker (Rm. 356)
Senator Karen E. Spilka, Senate President (Rm. 332)

March 25, 2021

Commonwealth of Massachusetts

Annual Report of Multi-Agency Illegal Tobacco Task Force

03/01/2021

Report and update on the work of the Multi-Agency Illegal Tobacco Task Force to combat illegal tobacco distribution and the resulting loss of revenue to the Commonwealth of Massachusetts

Members of the Multi-Agency Illegal Tobacco Task Force

Marikae Grace Toye, *Co-Chair*
Department of Revenue Designee

Major Steven Fennessy, *Co-Chair*
Massachusetts State Police Designee

Patricia Henley
Department of Public Health Designee

Michael Sweeney
Office of the State Treasurer and Receiver General
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Susan Terrey
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I. Task Force Creation and Legislative Background

As part of the Fiscal Year 2014 General Appropriations Act¹, the Massachusetts Legislature created the Commission on Illegal Tobacco (Commission) to study the magnitude and economic impact of the illegal tobacco market in the Commonwealth. On March 1, 2014, the Commission issued its “Report of Commission on Illegal Tobacco,” which provided a general overview of the illicit tobacco market in Massachusetts and contained a series of findings and recommendations.² Pertinently, one of the Commission’s primary recommendations was the creation of a Multi-Agency Illegal Tobacco Task Force. The Commission recognized that enforcement of the Commonwealth’s tobacco laws was spread across multiple agencies and envisioned the Multi-Agency Illegal Tobacco Task Force as the vehicle by which information and resources could be shared across agencies in order to maximize the effectiveness of enforcement efforts.³ In addition to the formation of the Multi-Agency Illegal Tobacco Task Force, the Commission recommended a number of statutory changes and updates, process improvements designed to increase compliance as well as tobacco excise and sales tax collections.

The Multi-Agency Illegal Tobacco Task Force (Task Force) was created pursuant to section 71 of the Fiscal Year 2016 (FY16) General Appropriations Act.⁴ According to its enabling statute, the Task Force is co-chaired by the Colonel of the State Police and the Commissioner of Revenue or their designees and additionally consists of the Secretary of Public Safety and Security, State Treasurer, Attorney General, and Commissioner of Public Health, or their respective designees. The Task Force is statutory required to “coordinate efforts to combat contraband tobacco distribution, including efforts to foster compliance with the law and conduct targeted investigations and enforcement actions against violators.”⁵ Further, the Task Force must

- (i) facilitate timely information sharing among state agencies in order to advise or refer matters of potential investigative interest;
- (ii) dedicate not less than an aggregate of 20 personnel from member agencies to carry out enforcement and investigative strategies;
- (iii) identify where illegal tobacco distribution is most prevalent and target task force members’ investigative and enforcement resources against those in violation of [chapter 64C] and chapter 62C, including through the formation of joint investigative and enforcement teams;
- (iv) assess existing investigative and enforcement methods in the commonwealth and in other jurisdictions and develop and recommend strategies to improve those methods; and

¹ St. 2013, c. 38, § 182.

² https://old.taxadmin.org/fta/tobacco/papers/MAcommissionreportonillegaltobacco_030114%20copy.pdf (accessed on February 11, 2021) (hereafter “Commission Report”).

³ Commission Report at pp. 5-6, 26-27.

⁴ St. 2015, c. 46, § 71; M.G.L. c. 64C, § 40.

⁵ M.G.L. c. 64C, § 40(a).

- (v) solicit the cooperation and participation of other relevant enforcement agencies and establish procedures for referring cases to prosecuting authorities as appropriate.⁶

The Task Force is required to meet at times and places determined by the Co-Chairs as “deemed necessary to carry out its mandate” and to submit a report by March 1 of each year “on the results of its findings, activities and recommendations from the preceding year....”⁷ Specifically, the report shall include: (i) a description of the Task Force’s efforts and activities during the year; (ii) identification of any administrative or legal barriers, including any barriers to multi-agency action or enforcement efforts; and (iii) proposed legislative or regulatory changes necessary to strengthen operations and enforcement efforts and reduce or eliminate any impediments to those efforts.⁸ The report is to be filed with the clerks of the Senate and House of Representatives, the Chairs of the Joint Committee on Revenue, the Chairs of the Senate and House Committees on Ways and Means, and the Chairs of the Joint Committee on Public Safety and Homeland Security. The Task Force is filing this Annual Report of the Multi-Agency Illegal Tobacco Task Force (Annual Report) in compliance with its March 1, 2021, reporting obligation.⁹

II. Results and Trends

Over the course of FY20, the Task Force has dealt with the significant expansion of the scope of its investigations and some challenges as a result of restructuring its criminal investigative teams in FY19. As a result of the restructuring, the Task Force has continued to rely on its partnerships with federal officials and law enforcement agencies from neighboring states to successfully disrupt and intercept sophisticated multi-state smuggling operations.

A. Excise Tax Data and Trends

As reported in the last several of its Annual Reports¹⁰, the Task Force’s enforcement actions have revealed a disproportionate amount of smuggling activity involving other tobacco products (“OTP”), which includes cigars, smoking tobacco and smokeless tobacco, relative to OTP’s share of the overall Massachusetts tobacco market. The Commonwealth’s high tax rates on OTP relative to other states provide smugglers a strong incentive to import such products from other low-tax states and sell them to in-state buyers willing to illegally evade payment of the applicable

⁶ M.G.L. c. 64C, § 40(b).

⁷ St. 2015, c. 46, § 71; M.G.L. c. 64C, § 40.

⁸ *Id.*

⁹ *Id.* For the Task Force’s prior reports, see <https://www.mass.gov/info-details/dor-illegal-tobacco-task-force> (tab entitled “Reports”) (accessed on February 11, 2021). The FY20 Annual Report was filed on February 28, 2020, and the FY19 Annual Report was filed on March 1, 2019.

¹⁰ See, e.g. FY18 Annual Report at pp. 5-6; FY19 Annual Report at pp. 5-6.

Massachusetts tobacco excise.¹¹ Figure 1 below demonstrates the amount of tobacco excise taxes collected by the Commonwealth on cigarettes and OTP over the past several fiscal years.¹² In prior year reporting, we have noted an increase in OTP's share of overall tobacco excise revenue collections. Specifically, OTP represented approximately 4.95% - 4.98% of total tobacco excise collections from FY14 through FY16 but that percentage rose in FY17, FY18 and FY19 to 6.32%, 7.1% and 8.03%, respectively. For FY20, OTP represented 7.8% of total tobacco excise collections.

Figure 1: MA Tobacco Excise Collections on Cigarettes and OTP¹³

Collections by Type (in Millions of Dollars)	FY15	FY16	FY17	FY18	FY19	FY20
Cigarette	617.5	610.0	582.7	554.6	515.4	486.0
All Other Tobacco Products (OTP)	29.6	30.4	36.8	39.4	41.4	37.9
Total	647.1	640.4	619.5	594.0	556.8	523.9

Meanwhile, Figure 2 below breaks down the amount of tobacco excise collected on OTP based on product type over the same period.

Figure 2: MA Tobacco OTP Excise Collections Broken Down By Product Category

Collections by Type (in Millions of Dollars)	FY15	FY16	FY17	FY18	FY19	FY20
Cigar & Smoking Tobacco	14.1	13.7	15.0	16.5	18.2	16.3
Smokeless Tobacco Products	15.5	16.7	21.8	22.9	23.1	21.6
Total	29.6	30.4	36.8	39.4	41.3	37.9

Beginning with the revenue figures from FY17 and continuing throughout FY20, some trends emerge from excise tax data. First, the amount of tobacco excise collected in FY20 from the sale of cigarettes experienced a significant (\$29.4 million) decrease, representing a 5.7% decline from the previous year. FY19 cigarette excise collection figures similarly showed a decrease of \$39.2 million (or 7.07%) decrease from FY18.¹⁴ These collection figures are not surprising as they correspond with a broader national trend of declining cigarette sales¹⁵ and decreasing numbers of

¹¹ The Massachusetts tobacco excise rate on smokeless tobacco products is 210% of wholesale price (highest in the nation) and the rate on cigars and smoking tobacco is 40% of wholesale price. See <https://www.tobaccofreekids.org/us-resources/fact-sheet/state-excise-tax-rates-for-non-cigarette-tobacco-products> (accessed on February 11, 2021) (updated as of December 28, 2020).

¹² It is important to note that all collections figures cited in this Annual Report exclude sales taxes collected on sales of tobacco products. The Department of Revenue does not separately track sales taxes collected on sales of tobacco products.

¹³ The FY20 MA Tobacco Excise Tax Collections on Cigarettes and OTP can be found in the Commonwealth of Massachusetts Department of Revenue Monthly Report of Collections and Refunds of June 2020. See <https://www.mass.gov/lists/blue-book-reports-department-of-revenue> (accessed on February 16, 2021).

¹⁴ Massachusetts tobacco excise rates did not change during this period. In fact, they have remained the same since July 31, 2013.

¹⁵ https://www.cdc.gov/tobacco/data_statistics/fact_sheets/economics/econ_facts/index.htm (citing Maxwell J.C., *The Maxwell Report: Year End & Fourth Quarter 2017 Cigarette Industry*, Richmond, VA (2018) (accessed on February 16, 2021)).

smokers.¹⁶ In fact, the percentage of Massachusetts adults who currently smoke cigarettes declined from 14.7% in 2014 to 13.4% in 2018.¹⁷

Prior years reports have noted that excise collected from sales of OTP for FY17 through FY19 experienced a notable increase even though excise collections from cigarette sales softened in FY18 and FY19. Notably, in FY19, OTP excise collections increased by \$2 million (or 5%) compared to FY18, in FY18, OTP collection showed a \$2.6 million (or 7%) increase over FY17, and in FY17, collections showed a \$6.4 million increase (or 21%) increase over FY16. *See Figure 1.* Excise tax collections on OTP in FY20 dropped by \$3.5 million (or 8.5%). Unlike with cigarettes, the excise collection figures relating to OTP do not correspond with and are not explained by user or sales trends. In fact, the latest available data show that smokeless tobacco usage in Massachusetts has steadily remained near the lowest of all states for the past few years.¹⁸

Given the lack of a demographic explanation, the Task Force previously considered a likely reason for the dramatic increase in OTP excise collections in FY17 through FY19 to be the increased tobacco enforcement activity coordinated by the Task Force, based on the Task Force's stepped up civil and criminal enforcement activities. As a result of a robust enforcement model, the Task Force has suspended tobacco licenses of retailers selling illegal (untaxed) tobacco products; seized and confiscated illegal tobacco products; issued civil assessments for unpaid tobacco excise taxes and penalties; and prosecuted large-scale smugglers for violations of the Commonwealth's tobacco tax laws. This spike in tobacco excise collections may be due to a number of factors. These factor may include an increase in compliance from violators that have been caught and punished by the Task Force or from an increase in voluntary compliance by those who have not been apprehended by the Task Force but have previously illegally avoided paying the required Massachusetts tobacco excise. Despite these notable successes, the illegal tobacco market in Massachusetts continues to operate, which serves to deprive the Commonwealth of millions of dollars of revenue in the form of tobacco excise taxes lost to the illegal market.

The Task Force can only speculate as to the reason for the drop in collection of excise tax on OTP demonstrated by the FY20 numbers. These figures capture tax collected for the months of

16, 2021) (reporting a 3.5% decrease in the number of cigarettes sold in the United States from 2016 to 2017).

¹⁶ https://www.cdc.gov/mmwr/volumes/67/wr/mm6702a1.htm?s_cid=mm6702a1_w (Centers for Disease Control and Prevention, *Cigarette Smoking Among Adults – United States, 2016*, Morbidity and Mortality Weekly Report; 67(2); 53-59 (dated January 19, 2018) (accessed on February 16, 2021) (reporting decline in current smokers nationwide from 20.9% in 2005 to 15.5% in 2016).

¹⁷ https://nccd.cdc.gov/STATESystem/rdPage.aspx?rdReport=OSH_STATE.Highlights&rdRequestForwarding=Form (citing Behavioral Risk Factor Surveillance System (BRFSS)) (accessed on February 16, 2021).

¹⁸ In 2018, the rate of current adult smokeless tobacco use in Massachusetts was 2.5%, see <https://www.cdc.gov/brfss/brfssprevalence/index.html> (accessed on February 16, 2021). In 2018, the rate of current adult smokeless tobacco in New Jersey (the lowest in the U.S.) was 1.4%, followed by the District of Columbia at 1.7%. Conversely, the highest usage rate in the country was in Wyoming (8.8%) followed by West Virginia (8.3%). https://www.cdc.gov/tobacco/data_statistics/fact_sheets/smokeless/use_us/index.htm (citing Centers for Disease Control and Prevention, *Behavioral Risk Factor Surveillance System: Prevalence and Trends Data*) (accessed on February 16, 2021).

July 2019 through and including June 2020. Consequently, COVID-19 pandemic that hit U.S. in early March 2020 could explain a portion of the decrease. As discussed more fully below, recent law changes concerning tobacco control may also play a role in this decrease.

Finally, since the data presented in this FY21 report runs through June 2020, there is only one month of data available concerning the new excise tax on electronic nicotine delivery systems (“ENDS”). Based on the July 2020 revenue report, \$1.68 million in excise tax was collected on this category.¹⁹ In its future reports, the Task Force will report on collections of excise tax on ENDS, as well as any trends that emerge from this data.

B. Recent Laws Changes Concerning Tobacco Control

In its FY20 Annual Report, the Task Force noted particular concerns around the lack of regulation of retailers selling “vape” or “vapor products.”²⁰ On November 27, 2019, Governor Charlie Baker signed “An Act Modernizing Tobacco Control” into law.²¹ The new law results in several notable changes to the law governing tobacco products in Massachusetts, such as a ban on the retail sale of flavored tobacco products (with sale of flavored tobacco products limited to smoking bars), as well as imposing new regulatory requirements and a 75% excise tax on the wholesale price of “vape” or “vapor products”, now defined as “electronic nicotine delivery systems,” held in Massachusetts.

As of June 1, 2020, flavored tobacco products, such as menthol cigarettes, flavored cigars and flavored smokeless tobacco cannot be sold at retail. The sale of these products is now restricted to sale at licensed smoking bars for onsite consumption. The new law sets forth licensure requirements and imposes an excise tax, among other things, concerning the sale of “electronic nicotine delivery systems” (“ENDS”) in Massachusetts, as defined in M.G.L. c. 64C, § 7E(a) broadly (including any component parts, accessories, batteries, etc.) and imposes a 75% excise tax on the wholesale price of all electronic nicotine delivery systems.²² The law also requires that electronic nicotine delivery system distributors and retailer obtain a license from the DOR.²³

III. Summary of Task Force Activities

Following the Task Force’s submission of its FY20 report on February 28, 2020, the Task

¹⁹ See The Commonwealth of Massachusetts Department of Revenue Monthly Report of Collections and Refunds of July 2020. See <https://www.mass.gov/lists/blue-book-reports-department-of-revenue> (accessed on February 16, 2021).

²⁰ FY19 Annual report, pp. 4, 13-14.

²¹ St. 2019, c. 133.

²² M.G.L. c. 64C, § 7E(b).

²³ M.G.L. c. 64C, § 7E(h).

Force has continued to meet on a regular basis to share information with member agencies, hear about recent developments in tobacco taxation and enforcement at the federal level and in other states, and to discuss important policy issues.

The Task Force has convened seven public meetings in the past year. Each of these meetings was held via videoconference due to the COVID-19 pandemic with notice given in accordance with Sections 18-25 of Chapter 30A of the Massachusetts General Laws and the Governor's Order suspending certain provisions of the Open Meeting Law, M.G.L Ch. 30A §20. These meetings took place on the following dates:

June 3, 2020
July 30, 2020
September 30, 2020
December 14, 2020
January 25, 2021
February 24, 2021
March 1, 2021

As discussed in its FY20 report, the Task Force held a public hearing on June 3, 2020 and invited input from various members of the tobacco industry, public health communities, and law enforcement agencies.²⁴ The Task Force solicited responses to the following questions, in particular:

1. *What technology is available to the Task Force's member agencies to allow us to address both the taxation of vaping products and the enforcement of the flavored tobacco ban?*
2. *What is the expected business impact of the Act and what increased enforcement mechanisms by the member agencies could address this impact?*
3. *What data is available concerning black market sales of electronic nicotine delivery systems/vape products during the states recent ban on vaping that could inform the Task Force's next steps?*
4. *What are the current black-market conditions for smokeless tobacco that might inform the Task Force's enforcement of the flavored tobacco ban moving after June 1, 2020?*
5. *How will the Task Force's member agencies responsibly dispose of electronic nicotine delivery systems that are seized in the course of enforcement actions?*

²⁴ This meeting, Meeting Number 35, was initially scheduled for March 23, 2020 and postponed due to the COVID-19 pandemic.

The Task Force heard testimony from nine members of the public at the meeting and received written testimony from an additional five participants.²⁵ The testimony varied widely with many choosing to express their concerns and displeasure with the flavor ban as enacted in November 2019, particularly cautioning that cross-border smuggling would increase. Testimony in this regard noted that nearby states having lower tax rates and no flavor bans in place and included statistics concerning cigarette tax evasion. The Task Force received testimony from public health advocates that spoke favorably of the ban and shared statistics concerning youth menthol smoking habits. The Task Force also received a letter from Sen. John F. Keenan in which he voiced his support for the expansion of the Task Force's scope and related funding increase as outlined in Governor Baker's FY21 budget proposal.

The Task Force also spent a large portion of its meeting time during FY20 discussing the mechanics of procuring a dedicated storage facility for tobacco and ENDS products seized by the Massachusetts State Police. At the December 17, 2019 meeting, the Task Force voted to move forward on a lease for storage space to be used by the Massachusetts State Police to securely store seized tobacco during the pendency of criminal prosecutions. The lease procurement process progressed through FY20 with the Task Force member agencies meeting and unanimously approving a Memorandum of Understanding concerning the maintenance of the facility and the payment of rent for the facility through Task Force budget appropriation on January 25, 2021. At the same meeting, the Task Force also voted unanimously to approve the lease negotiated by the Massachusetts State Police in conjunction with the Division of Capital Asset Management and Maintenance, subject to the Commonwealth's standard lease terms and conditions. The lease will soon be fully executed by the appropriate representatives of the Massachusetts State Police and the Task Force expects the storage facility to be open by the end of FY21.

Pursuant to the Massachusetts Open Meeting Law, detailed minutes of each Task Force meeting were taken, including all votes, presentations and discussions, and these minutes were published for the public according to the requirements of G.L. c. 30A, §§ 18-25.

In addition to its regular public meetings, the Task Force continued to successfully collaborate among Task Force agencies and enforcement action undertaken by the State Police and the Department of Revenue. Some enforcement activities had to be suspended for a time due to the COVID-19 pandemic, which made some aspects of investigation impossible. Despite the challenges presented by the COVID-19 pandemic, the Task Force agencies conducted an array of investigations—Below are some highlights from the past year:

- The State Police Detective Unit assigned to the Attorney General's Office has multiple active and on-going investigations throughout the Commonwealth, some of which are awaiting the sitting of a new Grand Jury for indictment. These complex financial investigations require the review and analysis of thousands of tax related documents.
- In October 2020, the Massachusetts State Police arrested an individual for tobacco tax fraud currently estimated at hundreds of thousands of dollars in tobacco tax fraud. A storage locker

²⁵ All materials received can be accessed and viewed on the Task Force's website under the Meeting 35, see <https://www.mass.gov/lists/illegal-tobacco-task-force-public-meeting-thirty-five>

full of tobacco was seized and search warrants were executed on six convenience stores in Worcester, Norfolk, and Charlton. Two vehicles were seized in furtherance of this investigation and the total tally of MA tobacco excise tax loss is still taking place. This case was investigated in cooperation with the Pennsylvania State Police and the Connecticut Department of Revenue.

- The Massachusetts State Police accepted a case referral from the U.S. Customs and Border Protection concerning the illegal importation of approximately 450 cartons of cigarettes into Massachusetts from Haiti.
- The Massachusetts State Police have assisted in and referred investigations to the federal Bureau of Alcohol, Tobacco, Firearms and Explosives and the federal Alcohol and Tobacco Tax and Trade Bureau. Further, they have assisted with and referred investigations to the New Hampshire, Connecticut, and Rhode Island Departments of Revenue for out of state inspections, investigations, and prosecution. They have also served subpoenas in various states in the Northeast U.S. for ongoing Massachusetts investigations.
- A variety of technical equipment previously purchased by the Task Force has been deployed in furtherance of multiple investigations including covert cameras and GPS tracking devices. Cell phone ping warrants as well as historical cell site location warrants have also been utilized in investigations.
- The Massachusetts State Police and DOR's Criminal Investigations Bureau assisted local police in western Massachusetts with a search warrant of a licensed retailer selling large quantities of illegal cigarettes. The search warrant resulted in the seizure of several thousands of cigarette packs containing tax stamps from other states, more than 1,600 cans of untaxed smokeless tobacco representing more than \$10,000 in unpaid taxes, and numerous untaxed cigars and ENDS products. Criminal charges were filed against the store owner and the matter was referred for a retailer license revocation.
- The DOR's Criminal Investigations Bureau conducted an inspection of a licensed cigar distributor in southeastern Massachusetts and determined the distributor was selling untaxed smokeless tobacco products despite not having a license to sell those products. Investigators seized untaxed smokeless tobacco products representing more than \$2,000 in unpaid taxes.
- The DOR's Criminal Investigations Bureau conducted an inspection of a licensed retailer in northeastern Massachusetts and seized untaxed OTP products representing more than \$3,000 in unpaid taxes. Further investigation revealed that the retailer had been purchasing the products from an unlicensed distributor over the past several years. The illegal activity has resulted in unpaid OTP taxes estimated to be more than \$800,000. The matter has been referred for a retailer license suspension and is pending further investigation.
- The DOR's Criminal Investigations Bureau conducted a tobacco inspection of a licensed retailer in Metro West and seized untaxed OTP. The store owner admitted to purchasing untaxed products from an unlicensed distributor and acknowledged that he had destroyed the documentation related to those purchases in violation of Massachusetts law. The illegal activity has resulted in unpaid OTP taxes estimated to be more than \$500,000. The matter is

pending further investigation.

- The DOR's Criminal Investigations Bureau conducted a tobacco inspection of a licensed retailer in central Massachusetts and seized several packs of menthol cigarettes with New Hampshire tax stamps. The store owner also admitted to regularly purchasing untaxed OTP from an unlicensed seller in the area. The matter is pending further investigation.
- The DOR's Criminal Investigations Bureau conducted a tobacco inspection of a licensed retailer in central Massachusetts and seized untaxed OTP and ENDS representing more than \$2,500 in unpaid taxes. The matter was referred for a license suspension.
- The DOR's Criminal Investigations Bureau conducted a tobacco inspection of a licensed retailer in central Massachusetts and seized approximately 500 packs of menthol cigarettes containing tax stamps from other states and more than 2,500 cans of untaxed flavored smokeless tobacco representing more than \$17,000 in unpaid taxes. The owner admitted to purchasing untaxed OTP from an unlicensed distributor over the period of several years. The illegal activity has resulted in unpaid OTP taxes estimated to be more than \$700,000. The matter has been referred for a retailer license suspension and is pending further investigation.
- Pursuant to Task Force compliance and enforcement operations, the Department of Revenue's Miscellaneous Excise Bureau has discovered and seized contraband OTP 27 times in FY20, resulting in the seizure of nearly 2,125 tins (in total) of untaxed smokeless tobacco and a large quantity of premium cigars.
- Pursuant to Task Force compliance and enforcement operations, the Department of Revenue's Miscellaneous Excise Bureau suspended the tobacco licenses of three tobacco retailers over the course of FY20. During routine compliance inspections, the Miscellaneous Excise Bureau conducted 13 cigarette seizures of 212 total packs of illegal (unstamped) cigarettes in their stores.

The Department of Public Health continued to build and refine the Point-of-Sale Toolkit (POST), a database created by CounterTools and used by Task Force member agencies to collect real-time data and track enforcement and inspection visits in tobacco retailers throughout Massachusetts. The system enables agencies to monitor enforcement actions undertaken in tobacco retailers throughout the state by viewing actions undertaken in an individual retailer over time, or by viewing actions undertaken in multiple retailers using various criteria of interest (such as date, geography, or agency). CounterTools is committed to continually improving system usability, and in FY21 made changes to the system to increase efficiency of data collection and updated the data collection tools to align with the new state tobacco sales laws. Going forward, CounterTools will continue to make changes to the system based on priorities identified by member agencies. CounterTools offered web-based trainings (which include a live demonstration of the system) to all interested local boards of health, with additional support provided through their help desk and DPH staff throughout the year. All webinars are recorded and made available to member agencies to view as needed. With continued utilization, POST has the potential to enhance collaboration among member agencies and streamline enforcement activities.

Finally, the Task Force has streamlined communication with the public and between its member agencies in a few different ways. The Task Force updated its website to include a tip line and email address that go directly to the Department of Revenue, Criminal Investigations Bureau for consideration, initial research, and referral for investigation, if warranted. Further, DPH and DOR have developed additional lines of internal communication to share information received concerning the illegal sale of flavored tobacco and ENDS products.

IV. Legislative Actions

As noted previously, a series of legislative changes took effect on June 1, 2020. Since these took place in the last month of FY20 and during the COVID-19 pandemic, it is difficult for the Task Force to see clear effects of these new provisions. However, as outlined on pages 9, 10 and 11 of this report, the Task Force members have had many successful investigations that uncovered untaxed tobacco products, including unstamped cigarettes and cigarettes bearing stamps from other states. Furthermore, early reports from investigations during FY21 have shown an uptick in seizures of flavored products being brought in from other states fueling the black market in the Commonwealth.

The FY21 Budget, approved on December 11, 2020, amended M.G.L. c. 64C, § 40 to expand the scope of the Task Force to include electronic nicotine delivery systems within the Task Force's enforcement efforts.²⁶ A budget increase reflecting this increased scope of Task Force activities accompanied this expansion, which will fund increased enforcement obligations, among other expenditures.²⁷

The Task Force will use the increased funding to devote additional resources to address cross border smuggling operations for tax and flavor-ban avoidance. The increased funding also allows the Task Force to fully fund the initial setup, maintenance costs, and lease payments for the dedicated storage facility expected to open within FY21. The increase in funding allows the Task Force member agencies to commit more personnel and hours to expand existing tobacco investigations, traditionally focused on OTP, while also expanding enforcement activities with an eye toward disrupting illegal and untaxed flavored cigarette, tobacco and ENDS sales. The Task Force has seen significant overlap between tobacco distributors and retailers and the distributors and retailers of electronic nicotine delivery systems. In addition to similar players for tobacco and electronic nicotine delivery systems, it bears noting that other similarities exist—such as an excise tax rate (75% of the wholesale price) that is significantly higher than neighboring states.²⁸ Therefore, combatting contraband sales of electronic nicotine delivery systems, such as those purchased in smuggling from other low-tax states, employs many of the same investigative techniques as those currently in use for investigating smokeless tobacco.

²⁶ St. 2020, c. 227 §§ 33, 34.

²⁷ St. 2020, c. 227 § 2, line item 1201-0400.

²⁸ For example, New Hampshire imposes an excise tax of 8% of the liquid or gel containing nicotine only. Maine imposes an excise of 43% of the wholesale price of the vape device. Neither state has banned flavored vaping products.

V. Anticipated Barriers

As discussed in the Task Force's report for FY20, increased investigative and enforcement activities has led to the seizure of larger quantities of illegal tobacco, resulting in a strain on the Task Force's storage capacity for contraband tobacco products. After discussing the fact that the Task Force had outgrown its current storage facilities for some time, the Task Force took on procuring a rented dedicated storage facility during FY21. After a substantial amount of work by the Massachusetts State Police, a suitable facility has been found and the procurement process will be completed shortly. This dedicated storage facility is expected to support Task Force investigations and remove a barrier that has existed for that past several years. During FY20, current tobacco storage continued to be nearly at maximum capacity, which once again led to an unusually low number of tobacco seizures. The Task Force expects the facility to be functional during FY21, allowing for more robust investigations and seizures of illegal product.

In the upcoming year, the Task Force will continue to gather information on disposal procedures for seized ENDS products. The Task Force member agencies, specifically DOR and Massachusetts State Police, currently dispose of seized tobacco products through a shredding and disposal process that does not work for ENDS products due to the nature of the liquid in the products, inclusion of electronic components and batteries, etc. The Task Force will have to identify best practices for safe disposal at the conclusion of its civil investigations and criminal prosecutions.

VI. Conclusion and Next Steps

Over the past year, the Task Force has successfully built upon the foundation it established with federal, state and local law enforcement partners upon its creation in 2015. While it has faced particular challenges concerning the storage of seized product, the shut down of investigative activity due to the COVID-19 pandemic, and changes to the existing laws, the Task Force remains poised to continue and expand its enforcement efforts due to increased funding and the successful procurement of a storage facility. With the recent law changes concerning electronic nicotine delivery systems and a ban on flavored tobacco products taking effect last year, the Task Force concludes that communication, information sharing, and targeting of investigative resources to combat contraband sales is just as vital today as it was in 2015.